LeMond Cycling, Inc. v. Trek Bicycle Corporation
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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

LEMOND CYCLING, INC.,
Plaintiff,

Case No.
vs. 08-CV-1010 (RHK-JSM)

TREK BICYCLE CORPORATION,
Defendant and Third-Party Plaintiff,

vs.

GREG LEMOND,
Third-Party Defendant.

DEPOSITION OF

KEVIN ISHAUG

May 11, 2009

8:30 a.m.

REPORTED BY: Kathy L. Soper, CSR, RPR
California CSR No. 8519

Confidential. It was authored by Mr. Ishaug.

THE WITNESS: Ishaug.

MS. BRUCE: Is it all right if I --

MR. WEBER: Sure.

MS. BRUCE: Can we mark this, please.

(Exhibit 176 marked for identification.)

BY MS. BRUCE:

Q. Okay. This is an e-mail initially authored by you sent to Dan Titus on March 20, 2008.

Do you recognize this e-mail?

A. I do.

Q. And you sent this to Mr. Titus?

A. Correct.

Q. In this e-mail you are referencing a matter that occurred.

Can you tell us a little bit about this incident.

A. Would you like me to read the e-mail?

Q. You can if you want.

A. I think this will tell the story as accurately as I recall.

Q. Actually, if you can, first just tell me a

little bit in your own words what you remember about the event.

A. Well, granted, this is a year and five months, four months ago, so -- there were two gentlemen that walked into my store on a busy Saturday in March and looking to purchase a fancy road bike.

They came in looking for a Trek 5.0 Madone. I informed them that both it was a good option, introduced them to the LeMond brand, and showed them the LeMond Zurichs that we had on the sales floor and said, "This bike would be a good value, less expensive, lighter weight, and would fit better," because both of those riders were taller riders, and Trek has a, generally, shorter top to dimension than a LeMond did.

So I suggested that both the value and the ergonomics and fit of the LeMond would be a better option for them.

After introducing the two to the bicycle, spending a couple of hours doing some general fitting and telling them about the value proposition, how the bikes work, telling them how they could expect the bike to ride, offering test rides, which they generously took advantage off, both of the riders indicated that they were very interested in the LeMonds, but the model year that I had on the floor was a 2007 and they were more interested in the 2008 colors and options.

So we pursued that, and they were in contact with me following the test ride saying that they were going to be coming in and they would like to know if I was going to be in. I indicated that I would be.

I received another follow-up phone call saying that they had actually procured the bicycles directly through a relationship with Mrs. LeMond, Kathy LeMond, through their mothers, and that they would like us to continue to offer our services, assemble the bicycles, fit the bicycles, sell them additional products at a significant discount, at which point I said, "I would be more than happy to fit you to the bicycles and assemble the bicycles at our market rate," and "Please bring the bikes in, we will help you out."

When the bicycles were brought in, attached to the bicycles were packing slips shipped -- bicycles shipped to Greg LeMond's house on Greg LeMond's account with the pricing of the manufacturer's landed cost.

There were three bicycles shipped, two bicycles brought into my store. I prompted to where the third bicycle was. One of the gentleman said, "We might be selling that one to cover the cost of the first two bicycles."

As you can imagine, this made my blood boil. I think there is a saying that goes like this: And pardon my candor. Don't shit where you eat.

Q. Okay. At the time these young men came in, did you know who they were?

A. No.

Q. When did you find out who they were?

A. They were speaking of a situation that was not public knowledge. They were speaking of the fact that Greg had just returned from a trip to Taiwan where he was actively pursuing a new partner.

And I said, "That's interesting,

because Trek has a partnership that goes for two more years with LeMond."

I know the product manager from LeMond, and he was working on a 2000 and -- then '9 and '10 product line that I had some information on, because I am part of their Dealer Advisory Board.

Having Aaron Mock's drawings and seeing the fact that he is putting a 2009 product line together, I said, "That's kind of odd that Mr. LeMond would be seeking a partnership outside of the Trek family."

And they said, "No, no, we know this because my mom knows Kathy LeMond," that he just got back and he is looking to part ways with Trek.

Hmmm. Hearsay, innuendo, people picking up the information off the Internet. Disregarded it, took it at face value, whatever.

Well, it turns out those young men knew an awful lot more than I did.

When I found out that they were buying the bicycles through Mr. LeMond, furthering the sort of fact that Mr. LeMond probably was, in fact, over in Taiwan looking for another partner, lended some credence to the fact that he would have no value in the relationship that I offered to the Trek/LeMond partnership, i.e., selling around a retailer in a market, which is not acceptable under his contract or under the Taft-Hartley Act.

You can't sell directly to a consumer behind your retailer's back.

Q. I am just going to go back to the kids for a second.

What relationship did you ultimately find out that they had to Kathy LeMond?

A. I believe one of the young men's mothers were friends with Kathy LeMond, and that they had spoken -- Kathy had spoken to his mother that, "My son is looking for a bike. Can you help me find a deal?"

Q. So before this, did you know that friends and family of Greg LeMond were able to get bikes?

A. No, and I don't believe they did, either.

Q. They --

need to happen, are you talking about consumers?

A. That's right.

Q. What would -- describe what you are talking about.

A. Consumers would come in, we would present the best bike for the consumer, and oftentimes when we would pull a LeMond from the rack, they would say, "No, I won't ride one of those. He has been, you know, besmirching Lance Armstrong, he as been using his celebrity status to throw stones and Lance."

So there was a public push-back, consumer push-back, to the LeMond brand.

Q. Prior to the controversy with Mr. Armstrong began in 2001 publicly, there was an issue that arose in 2000 where it was announced that LeMond accessories would be sold in Target stores.

Did you become aware of that, and if so, what was your reaction?

A. I did, and that was initially what promoted us to really evaluate the LeMond line in our store.

It's very difficult to sell a premier level product at an independent retailer when a large mass retailer is marketing the same brand. It really marginalizes the quality of the products we sell.

And so at that point it was really difficult for us to promote LeMond bicycles in a positive light when it was being promoted through Target Corporation, and seeing the same brand at Target, and as an independent bike dealer, it was very difficult.

Q. As an avid cyclist, even prior to purchasing Freewheel, you had known of Greg LeMond?

A. Correct.

Q. Was he somebody that you held in very high esteem?

A. His accomplishments, I would say I would place them at the top of the list of accomplishments for cyclists, not just an American cyclist, and I would say I did have a very high regard for Mr. LeMond as an athlete and as a human being.

Q. And as a result of the regard with which you